United Nations A/52/890

General Assembly

Distr.: General
7 May 1998

Original: English

Fifty-second session
Agenda item 114
Review of the efficiency of the administrative and financial functioning of the United Nations

Gratis personnel provided by Governments and other entities

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the following reports of the Secretary-General relating to gratis personnel provided by Governments and other entities: quarterly reports on the acceptance of gratis personnel (A/52/709 and Corr.1 and A/C.5/52/43); revised draft guidelines for the acceptance of gratis personnel (A/52/698); methodology to be applied to, and the level of, administrative support costs regarding gratis personnel (A/52/823); and phasing out the use of gratis personnel in the Secretariat (A/52/710). All of those reports were requested by the General Assembly in its resolution 51/243 of 15 September 1997. During its consideration of the reports, the Advisory Committee met with representatives of the Secretary-General who provided additional information.

Quarterly reports on the acceptance of gratis personnel (A/52/709 and Corr.1 and A/C.5/52/43)

2. The Advisory Committee recalls that the General Assembly, in paragraph 6 of its resolution 51/243, requested the Secretary-General to report on a quarterly basis, for appropriate action, on the acceptance of type II gratis personnel with a view to ensuring compliance with the provisions of paragraph 4 of the resolution. The Secretary-General's report of 4 December 1997 (A/52/709 and Corr.1) provides relevant information for the period from 16 to 30 September 1997, including receiving departments, nationality, duration of service and functions of the gratis personnel in question. Paragraph 3 of the report indicates that two individuals were accepted, after the adoption of resolution 51/243, in the Department of Economic and Social Affairs and the Department of Humanitarian Affairs, whose term of engagement was to end on 28 February 1998. In addition, paragraph 8 of the report, and the annexes thereto, indicate that the total number of gratis personnel declined from 330 at 31 October 1996, to 290 at 30 September 1997, and the number of receiving departments or units decreased from 15 to 9.

3. The information provided in the report of 10 March 1998 (A/C.5/52/43) covers the period from 1 October to 31 December 1997, and indicates that a total of 14 new type II gratis personnel started their service during that period, six in the Department of Peacekeeping Operations and eight in the International Criminal Tribunal for Rwanda. The Committee is of the opinion that the information provided in the reports fails to demonstrate the extent to which three of the six gratis personnel accepted in the Department of Peacekeeping Operations and the two gratis personnel accepted by the Department of Economic and Social Affairs

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and the Department of Humanitarian Affairs provide expertise not available within the Organization for very specialized functions, as is required under paragraph 4 (a) of resolution 51/243.

4. Indeed, the Committee is of the opinion that practically all functions assigned to the gratis personnel referred to in the quarterly reports under consideration should be performed by staff members, and that it is the lack of adequate staff resources that gives rise to the acceptance of type II gratis personnel rather than the need for very specialized functions not already available in the Secretariat or obtainable through recruitment. In the future, there should be a clearer demonstration and justification that acceptance of gratis personnel meets the requisite criteria.

5. The justification provided in paragraph 4 of the second report (A/C.5/52/43) for the other three new gratis personnel in the Department of Peacekeeping Operations – an engineering officer, a mission planning officer and a duty officer – is that they were accepted in the context of the transitional measures required for the execution of the phasing-out plan of the Secretary-General (see A/52/710).

6. In the table provided in the report (A/C.5/52/43), and in paragraph 5 specifically, it is also indicated that eight investigators were accepted in December 1997 to carry out specialized functions at the International Tribunal for Rwanda "pending completion of the recruitment procedures against posts approved by the General Assembly in the Tribunal's budget". Their term of engagement is scheduled to expire on 30 June 1998. Although the Committee was informed that this acceptance was linked to a sudden surge in the workload of the Tribunal, it believes that this action contravenes the procedures and provisions of resolution 51/243, which do not allow acceptance of gratis personnel on the grounds of failure by the Secretariat to recruit staff in an expeditious manner.

7. The Committee recommends that the Secretary-General continue to issue quarterly reports, clearly demonstrating the acceptance of gratis personnel in accordance with the provisions of paragraphs 4 (a) and (b) of resolution 51/243. The next report, which should be issued very shortly, should cover the period from 1 January to 31 March 1998, and should include information provided in the same form as the annexes to the Secretary-General's first report (A/52/709).

Revised guidelines for type II gratis personnel (A/52/698)

8. The Advisory Committee welcomes the redrafted guidelines (A/52/698), which take into account the observations and recommendations made by the Committee in its previous report (A/51/813) and the principles set out in paragraph 11 of General Assembly resolution 51/243. The Committee notes, however, that although the title of the report refers to "gratis personnel provided by Governments and other entities", the text of the guidelines is addressed to Governments as sole providers. The Committee was assured that only Member States would be approached. However, the Committee believes that the issue of accountability regarding other entities which have in the past provided such personnel, as in the case of the International Tribunal for the Former Yugoslavia, should be addressed.

9. With regard to third-party claims, the Committee considered that the provision in paragraph 25 of the report (A/52/698) needed to be clarified. The Committee requested that that provision be redrafted by the Office of Legal Affairs, on the basis of the comments and observations made by the Committee during the hearings. The revised text submitted by the Office of Legal Affairs, with an explanation of its consequences, appears in annex I to the present report.

10. In paragraph 27 of the report, it is indicated that the essential duties and obligations of the gratis personnel towards the Organization will be spelled out both in the agreement with the donor and in an individual undertaking signed by the gratis personnel. The Committee was informed that the models used would be similar to those used by the Tribunal for the Former Yugoslavia, amended to reflect the guidelines that will be approved by the General Assembly. Those models, received by the Committee upon its request, are set out in annex II to the present report.

11. The Committee recommends approval of the redrafted guidelines contained in document A/52/698, with the revisions and amendments indicated in paragraphs 8 to 10 above. The guidelines should be circulated in a bulletin or administrative instruction, and programme managers should be held personally accountable for the proper implementation of the guidelines in accordance with the principles of resolution 51/243.

Report on the methodology to be applied to, and the level of, administrative support costs regarding gratis personnel (A/52/823)

12. The views of the Advisory Committee with regard to the charging of support costs in the case of the acceptance of gratis personnel were stated in its previous report (A/51/813). The views of the Committee are echoed in paragraphs 8 and 9 of the Secretary-General's report (A/52/823).

13. The Committee understands that the personnel of the Security Council Special Commission, previously classified as type II, have been reclassified as type I. The Committee recalls that, in his previous report (A/51/688 and Corr.1), the Secretary-General had included this personnel as type II, indicating that they performed under special service agreements, whose support costs were funded from the frozen assets or voluntary contributions related to Security Council resolutions 778 (1992) and 986 (1995) (see A/51/813, para. 6 (b)). The Committee points out that type I gratis personnel are governed by administrative instruction ST/AI/231/Rev.1 of 23 January 1991, which applies to gratis personnel performing functions of a purely technical and operational nature funded through voluntary contributions.

Phasing out the use of gratis personnel in the Secretariat (A/52/710)

14. The Advisory Committee recalls that the General Assembly, in paragraph 9 of its resolution 51/243, requested the Secretary-General to phase out expeditiously type II gratis personnel falling outside the scope of paragraph 4 of the resolution, and to report thereon to the General Assembly at its fifty-second session. In paragraph 13 of the resolution, the Assembly further requested him to report on the impact of the phasing out.

15. The Committee notes from the information provided in the annex to document A/52/710 that, as of 1 November 1997, a total of 204 type II gratis personnel are reported in various departments. This compares with a total of 290 reported in document A/52/709 (see para. 2 above). The largest number, 130 gratis personnel, is reported in the Department of Peacekeeping Operations, and 52 in the Tribunal for the Former Yugoslavia.

16. The Committee was informed that the phasing-out plan had been prepared on the basis of attrition of existing tours of duty of the individuals in question. The Committee further notes that, with the exception of the Department of Peacekeeping Operations, all gratis personnel would be phased out by 31 December 1998. In the case of the Department of Peacekeeping Operations, the final date indicated in the report for a complete phase-out is 31 December 1999.

17. However, the Committee points out that the final phase-out date of 31 December 1999 indicated for the Department of Peacekeeping Operations is superseded by the information provided and resources requested in connection with the requirements for the support account for peacekeeping operations (A/52/837) for the period from 1 July 1998 to 30 June 1999. In paragraph 19 of that report, the Secretary-General proposes the conversion of 106 gratis personnel into support account posts. During the Committee's hearings on the subject of the support account, representatives of the Secretary-General, in response to queries of the Committee, confirmed that if the request for conversions were accepted by the General Assembly it would be possible to phase out all gratis personnel in the Department of Peacekeeping Operations by the end of December 1998.

Annex I

Revised guidelines for gratis personnel

Third-party claims: revised text submitted by the Legal Counsel

The United Nations will be responsible for dealing with claims by third parties where the loss or damage to their property, or death or personal injury, was caused by the actions or omissions of the gratis personnel in the performance of services to the United Nations under the agreement with the donor. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the gratis personnel provided by the donor, the donor shall be liable to the United Nations for all amounts paid by the United Nations to the claimants and all costs incurred by the United Nations in settling such claims.

Consequences of the revision of the text

Under the guidelines as currently drafted (A/52/698, para. 25), the donor of the gratis personnel, and not the United Nations, would be responsible for handling and settling claims arising from gross negligence or wilful misconduct of personnel provided by it. Under the revised text set out above, the United Nations would be responsible for handling and, where appropriate, settling such claims. It would then seek recovery from the donor for amounts paid by the United Nations to the claimants and for costs incurred by it in settling the claims. It would leave the donor the responsibility to seek reimbursement from the gratis personnel (if such recovery is available to the donor). However, there are likely to be cases in which the donor may have difficulty responding to claims by the United Nations for reimbursement of the amounts paid by the United Nations to the claimants. It would therefore be desirable for the United Nations to explore with the donor the possibility of the donor's obtaining insurance to cover liabilities incurred by the United Nations to third parties arising from the acts or omissions of the gratis personnel.

Annex II

MODEL

**MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED NATIONS
AND THE GOVERNMENT OF .....
FOR THE CONTRIBUTION OF PERSONNEL
TO THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

WHEREAS the United Nations Security Council, in its resolution 808 (1993) of 22 February 1993, and 827 (1993) of 25 May 1993, decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace (hereinafter: "The International Tribunal");

WHEREAS by paragraph 5 of resolution 827 (1993) the Security Council urged States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

AND WHEREAS the Government of ..... (hereinafter: "the Government") offered to make available to the International Tribunal the services of qualified personnel to assist in ..... ;

NOW THEREFORE the United Nations and the Government (hereinafter: "the Parties") have agreed as follows.

ARTICLE I
OBLIGATIONS OF THE GOVERNMENT

1. The Government agrees to make available to the International Tribunal for the duration and purposes of this Agreement the services of [expert personnel] (hereinafter: "..... Personnel") listed in Annex I hereto. Changes and modifications to the Annex may be made with the agreement of the Parties.

2. The Government undertakes to pay all expenses in connection with the services of the ..... Personnel, including salaries, travel costs, and allowances and other benefits to which they are entitled, except as hereinafter provided.

3. The Government undertakes to ensure that during the entire period of service under this Agreement, the ..... Personnel are covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, disability or death.

4. The Government shall pay to the United Nations a sum equivalent to 13 per cent of the total value of the services of the ..... Personnel as administrative expenses.

ARTICLE II
OBLIGATIONS OF THE UNITED NATIONS

1. The United Nations shall provide the ..... Personnel with office space, support staff, equipment and other resources necessary to carry out the tasks assigned to them at .....[recipient office].

2. During any mission assignment of the ..... Personnel to..... [any other territory outside the seat of the International Tribunal], the United Nations shall be responsible for the payment of travel costs to the mission area and return.

3. The United Nations shall pay to the ..... personnel, during their mission assignment referred to in paragraph 2 above, a Daily Subsistence Allowance (DSA) in accordance with the schedule of rates established for United Nations personnel.)

4. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of or related to the provision of services under this Agreement, except where such illness, injury or death results directly from the gross negligence of the officials or staff of the United Nations.

ARTICLE III
OBLIGATIONS OF THE ..... PERSONNEL

The Government agrees to the terms and obligations specified below, and shall, as appropriate, ensure that the ..... Personnel performing services under this Agreement comply with these obligations:

(a) The ..... Personnel shall perform their functions under the authority, and in full compliance with the instructions of [Registrar/Prosecutor], and any person acting on his behalf.

(b) The ..... Personnel shall undertake to respect the impartiality and independence of the International Tribunal and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government or from any authority external to the International Tribunal.

(c) The ..... Personnel shall refrain from any conduct which would adversely reflect on the International Tribunal or the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations.

(d) The ..... Personnel shall comply with all rules, regulations, instructions, procedures or directives issued by the International Tribunal.

(e) The ..... Personnel shall exercise the utmost discretion in all matters relating to their functions and shall not communicate, at any time, without the authorization of the [Registrar / Prosecutor], to the media or to any institution, person, Government or other authority external to the International Tribunal, any information that has not been made public, and which has become known to them by reason of their association with the International Tribunal. They shall not use any such information without the written authorization of the [Registrar / Prosecutor], and in any event, such information shall not be used for personal gain. These obligations do not lapse upon expiration of this Agreement.

(f) The members of the ..... Personnel shall sign an undertaking in the form attached to this Agreement in Annex II.

ARTICLE IV
LEGAL STATUS OF THE ..... PERSONNEL

1. The ..... Personnel shall not be considered in any respect as being officials or staff of the United Nations.

2. The ..... Personnel shall be considered "Persons Performing Missions for the Tribunal" within the meaning of Article XVII of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Tribunal.

ARTICLE V
CONSULTATION

The United Nations and the Government shall consult with each other in respect of any matter that may arise in connection with this Agreement.

ARTICLE VI
SETTLEMENT OF DISPUTES

Any dispute, controversy or claim arising out of, or relating to, this Agreement shall be settled by negotiation or other mutually agreed mode of settlement.

ARTICLE VII
ENTRY INTO FORCE; DURATION AND TERMINATION

This Agreement shall enter into force upon ....., and shall remain in force for ....., unless terminated earlier by either Party upon one month's written notice to the other Party. The Agreement may be extended with the consent of both Parties on the same conditions and for a further agreed period.

ARTICLE VIII
AMENDMENT

This Agreement may be amended by written agreement of both Parties. Each Party shall give full consideration to any proposal for an amendment made by the other Party.

IN WITNESS WHEREOF, the respective representatives of the United Nations and the Government of ..... have signed this Agreement.

DONE in The Hague, this ..... day of ..... in the year 1996, in two originals in the English language.

FOR THE UNITED NATIONS

Registrar
International Criminal Tribunal
for the Former Yugoslavia

FOR THE GOVERNMENT OF
_____

.....
Ambassador of ..... to the Kingdom
of the Netherlands

ANNEX I
LIST OF ..... PERSONNEL

[names]

ANNEX II
UNDERTAKING

I, the undersigned, as a member of the ..... Personnel made available by the Government of ..... to the United Nations pursuant to the Memorandum of Agreement between the United Nations and the Government of ..... for the Contribution of Personnel to the International Criminal Tribunal for the former Yugoslavia (hereinafter: "the International Tribunal"), hereby undertake to abide by the following:

(a) I understand that, as a member of the ..... Personnel, I shall not be considered in any respect as being an official or a staff member of the United Nations.

(b) I further understand that, while in the Netherlands, I will be considered as a "Person Performing Missions for the Tribunal" within the meaning of Article XVII of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Tribunal, and be accorded the legal status of Expert on Mission in accordance with sections 22 and 23 of Article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

(c) I shall perform my functions under the authority, and in full compliance with the instructions of the [Registrar / Prosecutor] of the International Tribunal, or any person acting on his behalf.

(d) I shall respect the impartiality and independence of the International Tribunal and shall not seek nor accept instructions regarding my functions as a member of the ..... Personnel from any Government or from any authority external to the International Tribunal.

(e) I shall refrain from any conduct which would adversely reflect on the International Tribunal or the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the United Nations or the exercise of my functions.

(f) I shall exercise the utmost discretion in all matters relating to my functions and shall not communicate, at any time, without the authorization of the [Registrar / Prosecutor], to the media or to any other institution, person, Government or other authority external to the International Tribunal, any information that has not been made public, and which has become known to me by reason of my functions. I shall not use any such information without the authorization of the Prosecutor and, in any event, such information shall not be used for personal gain. These obligations do not lapse upon termination of my assignment.

(g) I shall comply with all rules, regulations, procedures, instructions or directives issued by the International Tribunal.

_____
Name printed in block letters

_____
Signature

_____
Date